

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

| | | |
|------------------------------|---|----------------------|
| _____ |) | |
| In the Matter of |) | |
| |) | |
| Preserving the Open Internet |) | GN Docket No. 09-191 |
| |) | |
| Broadband Industry Practices |) | WC Docket No. 07-52 |
| _____ |) | |

COMMENTS OF 4INFO, INC.

Michael B. Hazzard
Jason A. Koslofsky
Arent Fox LLP
1050 Connecticut Ave, N.W.
Washington, DC 20036-5339
Tel: (202) 857-6029
Fax: (202) 857-6395
hazzard.michael@arentfox.com
koslofsky.jason@arentfox.com

Counsel to 4INFO, Inc.

Dated: January 14, 2010

TABLE OF CONTENTS

| | Page |
|---|------|
| I. INTRODUCTION AND SUMMARY..... | 1 |
| II. BACKGROUND ON 4INFO AND THE GROWTH OF SMS..... | 2 |
| A. Overview of 4INFO..... | 2 |
| B. Text Messaging Calls and the Mobile Marketplace | 5 |
| III. SMS CALL BLOCKING BY WIRELESS CARRIERS THREATENS CONSUMER ACCESS TO CONTENT OF THEIR CHOOSING | 10 |
| A. Instances of Blocking Calls to Short Codes | 13 |
| B. Verizon Recently Blocked Calls to 4INFO's Short Code | 15 |
| IV. OPEN INTERNET PRINCIPLES SHOULD APPLY TO ANY MEANS BY WHICH CONSUMER ACCESS CONTENT OF THEIR CHOOSING..... | 17 |
| V. CONCLUSION | 20 |

4INFO, Inc. (“4INFO”), through counsel, files the following comments in response to the Commission’s Notice of Proposed Rulemaking, *Preserving the Open Internet*, GN Docket No. 09-191 and *Broadband Industry Practices*, WC Docket No. 07-52 (rel. Oct. 22, 2009).¹ 4INFO’s comments primarily address Sections VI.C, VI.D and VI.H.3.b in the Notice of Proposed Rulemaking regarding consumers’ access to the content of their choosing without improper interference by wireless providers.

I. INTRODUCTION AND SUMMARY

4INFO commends the Commission for working towards expanded principles of the open Internet to wireless networks because it only benefits consumers when they can access innovative and competitive businesses through their mobile phones. Consumers should be able to call 4INFO (and other content providers) over the Short Message Service (“SMS”) network and access available content through their mobile phones as easily as they can over the traditional Internet. Today, however, that is not the case due to the mobile operators’ control over the SMS network and “short codes” used by 4INFO and other content providers to deliver requested, lawful content to consumers. The consolidation of the wireless industry has placed considerable power into the hands of just a few wireless providers. Four carriers – Verizon Wireless, AT&T, Sprint-Nextel, and T-Mobile – control 90% of the wireless market, with Verizon and AT&T combined in control of 60% of the wireless market.²

¹ Available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-09-93A1.pdf.

² Office of Senator Herb Kohl, Press Release, *Kohl Examines Causes of Rising Text Message Pricing*, June 16, 2009, http://kohl.senate.gov/newsroom/pressrelease.cfm?customel_dataPageID_1464=2870.

Consumers of the nations' largest wireless carriers face considerable hurdles accessing the content of their choosing because of the bottleneck control exercised by the wireless operators. With the growth of the mobile Internet and the use of text messages by mobile users, new opportunities for companies like 4INFO to offer innovative products to the public have arisen. The wireless providers should not be able to block calls by blocking a mobile phone user's ability to send text messages to a competing business or prevent a consumer from obtaining the content of their choosing through text messages. If such blocking is allowed, despite the Commission's call-blocking rules and open Internet principles, mobile phone users will suffer and competing businesses will be shut out of the wireless marketplace. Protecting consumer choice requires open access to wireless networks whether through text messages or the mobile Internet.

II. BACKGROUND ON 4INFO AND THE GROWTH OF SMS

A. Overview of 4INFO

Founded in 2004, and based in San Mateo, California, 4INFO is a leading mobile media company and pioneer of text message information services. 4INFO provides consumers with free text message alert and text message search services, supported by targeted, high-quality advertising opportunities. The largest provider of text message alerts and information in the United States, 4INFO delivers millions of real-time information and entertainment messages as responses to a search query or as alerts on subjects ranging from sports scores and weather updates to stock quotes and celebrity gossip. 4INFO's services work on any cell phone and are free. 4INFO does not charge for the services it provides. The only costs a consumer may experience are charges by their wireless provider under the consumer's wireless plan. 4INFO can offer its content

for free because of advertising inserted in the text messages. Thousands of companies that want to provide content and services over SMS partner with 4INFO to deliver content via mobile phones, making it possible for these companies to deliver free ad-supported SMS content to their consumers.

4INFO offers three free services to consumers, in addition to multiple enterprise offerings. First, mobile phone users can sign up for subscription-based text message alerts and content on subjects of their choosing, such as the latest news, sports scores, the weather, or horoscopes. The consumer has the ability to change the frequency of or even completely opt-out of these subscriptions at any time via their mobile phone or online at 4INFO's website. This content that 4INFO distributes to mobile phone users comes from both 4INFO and also the thousands of premier publishers that 4INFO serves. Those publishers include, among others, USA Today, the nation's top-selling newspaper, and USA Today's publisher Gannett Co., Inc.; E! Entertainment Television, Inc., a source of entertainment and lifestyle news; the San Francisco 49ers, a professional American football team based in San Francisco, California; and several other news companies such as the Boston Herald and Connecticut's Hartford Courant.³ 4INFO has also partnered with other businesses, such as the website evite.com, which integrated 4INFO's alert system into its service. With 4INFO's services, users of evite.com could register to receive text messages when certain events occurred, such as an acceptance of an invitation made through evite.com.⁴ These publishers and content providers have content that they want to distribute and consumers are seeking this content. 4INFO's service allows content publishers to reach a vast audience with their content through another

³ <http://advertising.4info.net/publishers/>

⁴ <http://www.evite.com/app/mobile/alert/mobileAlertAutomatedAlertSignUpModule.do>

media, text messages, much like they reach an audience through their websites or print media.

Second, 4INFO offers mobile search via text messaging. A mobile phone user can use 4INFO's service to look up similar information such as news, a current sports score, horoscope, movie times, or stock prices. The text message search service also allows a mobile phone user to even look up directory information on businesses, such as a restaurant in a particular zip code. Finally, 4INFO also offers a mobile website search function that allows access to the same information that is provided through the text message alerts or through text message search, but in the context of a mobile webpage. All of these services are free to the consumer and are ad-supported by companies with which 4INFO has partnered.

Because 4INFO's service is free, easy to use, and extremely useful to consumers, 4INFO has experienced tremendous growth in the mobile marketplace and is one of the country's most popular text message services. In the second quarter of 2009, 4INFO was the number one text message company in unique users and served approximately 15% of all persons using text messaging. In that same period of time, 4INFO was the number four provider of short code traffic. Over the lifetime of the company, approximately 32 million unique users have used 4INFO's services.

Thus, 4INFO has developed into one of the leading content providers of mobile text-message-delivered content. Consumers are using 4INFO's services because 4INFO and its partners provide them with the information they want for free and in a convenient way. Moreover, 4INFO's partners (both publishers and advertisers) have seen the benefit of reaching consumers through ad-supported content. 4INFO's growth

has attracted the attention of large strategic interests and those interests have provided considerable funding for 4INFO. Entities such as NBC Universal and USA Today's publisher Gannett Co., Inc. have seen the value of 4INFO and invested in 4INFO's success. Given the growing number of mobile phone users, 4INFO will only continue to grow in size because consumer demand will only grow for the types of services that 4INFO provides.

B. Text Messaging Calls and the Mobile Marketplace

4INFO's success is directly attributable to the enormous growth in the number of mobile phone users over the last decade. According to the Cellular Telecommunications & Internet Association (CTIA), at the end of 2008, 87% of the U.S. population owned a mobile phone – equivalent to approximately 270.3 million wireless subscribers.⁵ Mobile phones have become the sole communication devices in millions of households. CTIA estimates approximately 20% of U.S. households are wireless-only.⁶ As the mobile market has developed, so has the functionality of mobile phones.

At present, however, the market is not fair. Directly flouting the Commission's call blocking prohibitions and open Internet principles, the mobile network operators take the view that they can block SMS calls to 4INFO's text messages (and anyone else's, for that matter) for good reason, bad reason, or no reason at all. Examples of text message blocking are described below in greater detail. The Commission should do everything possible to ensure the opposite result by vigilantly enforcing its call blocking rules and by ensuring that principles of the open Internet

⁵ CTIA, *Wireless Quick Facts*, available at <http://www.ctia.org/advocacy/research/index.cfm/AID/10323> (last visited January 12, 2010).

⁶ *Id.*

extend to wireless networks, just like wired networks. Consumers benefit when they have access to the content of their choosing whether it be through text messages or the traditional Internet. This should be done in a way that respects a mobile phone user's privacy, but that prohibits a wireless provider from unilaterally preventing the consumer from accessing the content of their choosing under open Internet principles. A consumer should be able to request and receive text messages from USA Today or evite.com without the interference from their wireless providers in the same manner they could access either entities through a website with an absence of interference from their Internet provider.

Part of the tremendous growth in the use of mobile phones has been in the increasing use of text-messaging as a means of making calls on mobile phones. Although text messaging has a history dating back to the early 1990's, widespread use has only occurred recently.⁷ The use of text messages has grown significantly and the number being sent has nearly doubled every year since 2006. Approximately, 162 billion messages were sent over U.S. carrier networks during 2006, 363 billion mobile messages were sent during 2007, and an estimated 600 billion messages were sent during 2008.⁸

These numbers will only grow. In the first half of 2009, according to CTIA's semi-

⁷ Patricia Moloney Figliola, Congressional Research Service, *Text and Multimedia Messaging: Emerging Issues for Congress* (Mar. 23, 2009) available at http://assets.opencrs.com/rpts/RL34632_20090323.pdf. Attached hereto as Exhibit A. Text messages are sent on a wireless channel between the mobile phone and the mobile phone tower called the "control channel." A mobile phone is constantly communicating through the control channel with the mobile tower to determine which network the mobile phone is in and what towers it is using. This interaction occurs even when the mobile phone is not in use. The control channel is also used to send small packets of data back and forth between the mobile phone and tower to ensure the connection between the two are still operating. Text messaging takes advantage of the channel as well.

⁸ Common Short Code Administration, *The Market for Common Short Codes*, available at http://www.usshortcodes.com/csc_about.html

annual wireless industry survey, more than 740 billion text messages were carried by wireless carriers, which works out to 4.1 billion messages per day.⁹

Text messages are referred to as Short Message Service or SMS, which is the standard used by mobile phones to send and receive the 160 character messages. The terms SMS and text message are used interchangeably. Text messaging provides another means, besides voice, that two mobile users can communicate between their mobile phones to exchange messages, content, or even applications.

Text messaging has also become a significant method by which consumers can access the content of their choosing from their mobile phones. This use of text messages by consumers has been enhanced by the development of “common short codes,” also known as CSCs or “short codes,” specifically for text messages. Short codes are special telephone numbers that only work for text messages and are usually five or six digits long (instead of a typical telephone number of ten digits). Some short codes are exclusive to a single wireless provider, and may be less than five digits. The short codes are most often used by a mobile phone user to communicate with a company or organization and obtain mobile content, participate in text-messaging voting, or sign-up for alerts on the news or other information.

Short codes provide consumers direct access to a company or organization’s so-called application which provides the mobile content. “Application providers” create the applications which use and process the short codes. A company with content to distribute may partner with an application provider or develop its own

⁹ Cellular Telecommunications & Internet Association, *CTIA—The Wireless Association Announces Semi-Annual Wireless Industry Survey Results*, Oct. 7, 2009, available at <http://www.ctia.org/media/press/body.cfm/prid/1870> (last visited January 13, 2010).

application in order to run a promotion or other marketing plan through short code messaging. Mobile phone users may be asked to send a certain text message to a short code obtained by the company. When the application receives the text message, it can process the message and interact with the mobile phone user by returning a text message to the mobile phone user. For example, a mobile phone user may send a text with the name of sports team to one of 4INFO's short codes (such as 44636), upon which 4INFO's application would process the short code message and send a text message back with the latest scores for that team along with information about the next game the team is playing. The mobile phone user could also sign up for text message alerts and periodically receive a text message from the 4INFO short code with scores for that same team. 4INFO can be considered both a content provider when it gives a mobile phone user the user's requested information and also an application provider because 4INFO has developed its own system to provide the content sought by consumers.

Companies lease short codes from the Common Short Code Administration ("CSCA").¹⁰ The CSCA is part of the CTIA,¹¹ which is a nonprofit membership organization that represents all sectors of wireless communications and companies in the wireless industry. The CSCA administers the short codes for wireless carriers and oversees the technical and operational aspects of short code use. To lease a short code, the CSCA allows a company to search for and choose a specific vanity short code that may correspond to a five or six letter word (such as short code 44636, which is

¹⁰ Common Short Code Administration, *Functional Roles Involved in CSC Administration*, available at <http://www.usshortcodes.com/aboutCSCA.html> (last visited January 12, 2010).

¹¹ Cellular Telecommunications & Internet Association, *About Us*, available at <http://www.ctia.org/aboutCTIA> (last visited January 12, 2010).

“4INFO” on the phone keypad), or companies can choose a random short code. The vanity short codes are more expensive to lease than a randomly-assigned one. Once a company has a short code and has partnered with an application provider or developed its own application, it must then enter into contracts with wireless providers to recognize the short code so that the wireless providers will route short code text messages to the correct application provider. In the case of non-exclusive short codes, an application provider who obtains a short code wants that short code to work across all wireless providers. A short code is useless if a mobile phone user’s wireless provider does not recognize the short code or send it to the application provider for processing.

Thus, in many cases, application providers enter into one contract with an “aggregator” instead of multiple contracts with various wireless companies. The aggregator typically has connectivity already established with many of the wireless companies, so that the application provider can use its short code without entering into multiple contracts. Thus, a short code message from a mobile phone user often travels first to the wireless company who then sends the short code to an aggregator who then sends it to the application provider. The application then processes the message and sends the appropriate text message back to the mobile phone user. Because of the growth in the mobile web described above, text messages can include links that mobile phones can use to connect to the Internet and download mobile content.

Some famous examples of mobile marketing programs that used short code messaging include voting on the television show American Idol (text messaging “VOTE” to the short code assigned to the candidate the mobile user wants to win)¹² and

¹² <http://www.americanidol.com/mobile/>

Coke's "My Coke Rewards" promotion (text messaging the alphanumeric code underneath a soda cap to earn points which can be used to obtain rewards).¹³ Beyond commercial mobile campaigns, short codes are becoming a popular method for politicians to reach supporters in political campaigns as well. Even the Obama Presidential Campaign used short codes as part of its announcement of the Vice-Presidential nominee (text messaging "VP" to short code 62262 (*i.e.*, "OBAMA") to receive a "first to know" text message announcing Obama's running mate).¹⁴ This is a small fraction of the mobile marketing campaigns and other mobile programs that exist in the marketplace.

III. SMS CALL BLOCKING BY WIRELESS CARRIERS THREATENS CONSUMER ACCESS TO CONTENT OF THEIR CHOOSING

Because short codes allow direct contact between a company and a mobile phone user, the industry has established best practices focused on consumer protection and privacy. The Mobile Marketing Association ("MMA") is a global trade association that focuses on the growth of mobile marketing and its associated technologies. Working with all major wireless carriers and content and application providers, the MMA developed best practices for mobile marketing campaigns in order to safeguard consumers from unwanted text messages and other practices that might turn mobile phone users away from mobile marketing campaigns. The MMA publishes "U.S. Consumer Best Practices"¹⁵ and a "Global Code of Conduct"¹⁶ designed to achieve those

¹³ <http://www.mycokerewards.com>

¹⁴ <http://my.barackobama.com/page/s/firsttoknow> (last visited January 12, 2010)

¹⁵ MMA, *U.S. Consumer Best Practices*, available at <http://www.mmaglobal.com/bestpractices.pdf>.

ends. These industry guidelines are designed to benefit the consumer and are designed to be followed by wireless carriers and content and application providers in developing mobile marketing campaigns. 4INFO is in compliance with all industry guidelines and standards and an active participant in the MMA. In fact, 4INFO is on committees at the MMA that develop and refine the mobile advertising best practices. Wireless carriers often create their own guidelines and 4INFO complies with them as well.

Besides self-regulation by the wireless industry, the Commission has recognized that text messaging falls within its regulatory authority¹⁷ and that authority has been affirmed by at least one federal circuit court.¹⁸ That federal court relied on the Commission's rules and regulations which equated text messages with voice calls for purposes of the Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227. Thus, because text messages were calls under the TCPA, per the Commission's interpretation, text messages cannot be sent unsolicited to recipients using an automatic telephone dialing system. Just as SMS messages are calls for purposes of the TCPA, they are calls for purposes of the Commission's rules prohibiting call blocking.

The Commission has repeatedly prohibited call-blocking, including by wireless providers.¹⁹ The Commission's *Call Blocking Order* resulted from various carriers using "self help" methods like call blocking when those carriers disputed the

¹⁶ MMA, *Global Code of Conduct*, available at <http://www.mmaglobal.com/codeofconduct.pdf>.

¹⁷ *In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 18 FCC Rcd. 14014, 14115 (July 3, 2003).

¹⁸ *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946, 951-54 (9th Cir. 2009).

¹⁹ *In re Establishing Just and Reasonable Rates for Local Exchange Carriers, Call Blocking by Carriers*, Declaratory Ruling and Order, 22 FCC Rcd 11629 (June 28, 2007) ("*Call Blocking Order*").

practices and charges of other carriers. The Commission rejected call blocking in all but the rarest circumstances and certainly not as the result of a carrier dispute. “Because the ubiquity and reliability of the nation's telecommunications network is of paramount importance to the explicit goals of the Communications Act of 1934, as amended, (Act), we reiterate here that Commission precedent does not permit unreasonable call blocking by carriers.” *Id.* ¶ 1 (footnotes omitted). Further, “Commission precedent provides that no carriers ... may block, choke, reduce or restrict traffic in any way.” *Id.* ¶ 6. Yet, wireless carriers do just that when they arbitrarily block text messages sent or requested by their customers.

The considerable influence of the wireless providers and the ability to block text message calls is also a potential problem for the successful utilization of short codes in delivering content to mobile phone users. A Petition filed in December 2007 still presently before the Commission urges the Commission to treat text messages as a Title II common carrier services subject to all Title II provisions including nondiscrimination, accessibility, and the § 208 complaint process.²⁰ 4INFO urges the Commission to grant that Petition. Should the Commission not act on that Petition or in regard to the present Notice of Proposed Rulemaking, wireless providers may continue to pretend that that the Commission’s prohibition on call blocking does not apply to SMS calls and maintain a claim that it has the authority to censor or block any text messages they deem controversial or even competitive. For example, Verizon Wireless has been caught blocking text messages in several instances now, including 4INFO’s text

²⁰ *Petition of Public Knowledge et al. for Declaratory Ruling Stating that Text Messaging and Short Codes are Title II Services or are Title I Services Subject to Section 202 Nondiscrimination Rules*, WT Docket No. 08-7 (filed Dec. 11, 2007).

messages. In one case Verizon recanted after a public outcry, in another Verizon has maintained an unassailable right to block text messages. Whatever dispute a wireless provider may have with a text message service provider, blocking text message calls should not be an option of the wireless carriers.

A. Instances of Blocking Calls to Short Codes

In September 2007, Verizon Wireless notified NARAL Pro-Choice America that it was rejecting NARAL's request to open Verizon's network for NARAL's pro-choice text messages.²¹ Although NARAL would only send the text messages to mobile phone users who requested that NARAL send the text messages, Verizon rejected NARAL's request based on an undisclosed internal policy against "controversial or unsavory" text messages. However, Verizon quickly recanted when faced with widespread criticism and, the next day, re-opened its network to NARAL's text messages.²² Even after recanting with regard to NARAL, Verizon maintained its right to choose what messages it transmits, even in cases where consumers were seeking to access lawful content of their choosing.²³

Verizon's self-asserted right to block SMS calls it deems "controversial" starkly demonstrates the open Internet issues that can arise with text messages. Even if a Verizon subscriber wanted to receive the content of the user's choosing, *i.e.* NARAL's

²¹ Adam Liptak, *Verizon Blocks Messages of Abortion Rights Group*, N.Y. Times, Sept. 27, 2007, at A1, 2007 WLNR 18960271, available at <http://www.nytimes.com/2007/09/27/us/27verizon.html>. Westlaw version attached hereto as Exhibit B.

²² Adam Liptak, *Verizon Reverses Itself on Abortion Messages*, N.Y. Times, Sept. 28, 2007, at A20, 2007 WLNR 18998680, available at <http://www.nytimes.com/2007/09/28/business/28verizon.html>. Westlaw version attached hereto as Exhibit C.

²³ *Id.*

text messages, and had expressly requested that NARAL send the text messages, Verizon blocked that avenue of communication based on Verizon's unilateral decision that it contained "controversial" content. Such content-based discrimination unlawfully impinges on the First Amendment rights of consumers and organizations. Verizon's unilateral classification of the content and subsequent blocking could logically lead Verizon to block other content on less controversial subjects than abortion based on Verizon's perceived harm of the content. Given the wireless provider's control over its network, conceivably, a wireless provider could block text messages related to a competitor's mobile marketing campaign.

In fact, several wireless providers did just that when they blocked the text messages of a company called Rebtel Networks in late 2007.²⁴ Rebtel allowed mobile phone users to text the company an international telephone number and Rebtel would then text back a local number that after being dialed, would then connect the mobile phone user to the international telephone number previously sent by text message. By using the local telephone number, the mobile phone user avoided the wireless provider's much higher rates that would apply by dialing the international number directly. T-Mobile, Alltel, and Verizon all blocked Rebtel's text messaging, cutting off the ability of Rebtel to send the local telephone number. In response to calls that the wireless providers should not block text messages, Verizon unequivocally stated that it can block

²⁴ Bruce Meyerson, *Not on Our Network, You Don't*, BusinessWeek, Dec. 13, 2007, available at http://www.businessweek.com/magazine/content/07_52/b4064034911363.htm (last visited January 12, 2010). Attached hereto as Exhibit D.

calls to a competitor's short codes,²⁵ even in the face of the Commission's call blocking rules, which apply equally to SMS calls as they do to other types of calls.

Other companies have faced SMS call blocking by AT&T as well. Myxer Inc. ("Myxer") has had its short codes and, therefore, content blocked in the past by text message aggregators when AT&T either deliberately or inadvertently expressed concern to aggregators about Myxer's undefined and unsubstantiated "potential copyright infringement." The aggregator is ultimately dependent on the wireless carrier for its business, and, thus, may act on the perceived or implicit pressures of the wireless provider. Myxer faced blocking by Verizon as well when, like AT&T, Verizon decided to unilaterally police copyright law and the MMA guidelines. Millions of Verizon customers lost access to Myxer's content, which included downloadable ringtones and wallpaper. Verizon eventually agreed to stop blocking Myxer's short code messages, so long as Myxer severely limited the content that was available to Verizon customers. Losing access to the millions of customers of the nation's largest wireless carrier had a dramatic impact on Myxer's business by dramatically reducing the number of new users per day. By restricting the free flow of content, AT&T and Verizon were able to have a significant negative impact to a business competitor and also restricted users from having access to products and services of their choice.

B. Verizon Recently Blocked Calls to 4INFO's Short Code

4INFO has also suffered from text message blocking from Verizon. On December 1, 2009, 4INFO received notice that Verizon intended to shut down 4INFO's primary short code (one of 40 that the company manages). The stated reason for the

²⁵ *Id.*

shutdown was the violation of the MMA's industry guidelines for mobile marketing and use of a certain type of advertising unit being used to opt-in users to other mobile content services. Although 4INFO was in full compliance with all industry guidelines and all instances of that advertising unit had been removed as of December 2, Verizon elected to shut down 4INFO's 44636 code regardless. On December 3, Verizon disabled all messages from its customer's mobile phones to 4INFO's short code 44636 (*i.e.*, mobile-originated messages, or "MOs") without notifying consumers, 4INFO or 4INFO's aggregation partners. As 4INFO provides mobile search and alert services via text messages, this meant that any Verizon mobile phone customer who tried to get information via 4INFO received no response from 4INFO or its partners on that short code, nor did the Verizon customer know why they were not getting a response. On December 4, Verizon disabled all messages sent from 4INFO to Verizon's customers (*i.e.*, mobile-terminated messages or "MTs") as well, providing consumers with a single text message that simply said they would receive no further messages from this short code.

Consumers, (both 4INFO's and partners' customers) were very unhappy, as many rely on 4INFO to keep track of sports scores, weather, news and other information. Many were concerned that these same types of services were available from Verizon on a premium basis, and that they would be forced to pay Verizon for a service they'd previously been receiving from 4INFO or its partners for free. Although Verizon cited other motivations for the shut-down, there is an obvious incentive for Verizon to steer its users towards its own products at the expense of a free competitor. Verizon blocked 44636 until Thursday, December 10, when they allowed 4INFO to resume

serving their consumer customers. 4INFO had historically been responsive to all of Verizon's audit requests and concerns about 4INFO's compliance with industry guidelines and promptly responded to the concerns raised by Verizon in this instance as well. To Verizon's credit, Verizon kept lines of communication open with 4INFO and worked to resolve the text message blocking in order to achieve its stated goal of protecting its mobile phone users' privacy interests. However, whatever Verizon's intentions in blocking 4INFO's text messages, Verizon's complete blocking of 4INFO's short code harmed consumers by restricting millions of consumers from the content of their choosing without providing them any additional protection.

Text message blocking obviously restricts a mobile phone user from obtaining the legal content of the user's choosing. Expanding open Internet principles to include wireless networks and text messaging would prevent a mobile phone user from facing these types of situation again.

IV. OPEN INTERNET PRINCIPLES SHOULD APPLY TO ANY MEANS BY WHICH CONSUMER ACCESS CONTENT OF THEIR CHOOSING

Despite 4INFO's compliance with and even development of mobile advertising industry codes of conduct, 4INFO faces significant challenges without open Internet principles applied explicitly to wireless networks and text messages. When every part of the short code system is working properly, 4INFO is able to send mobile content to any mobile phone user that requests such content. A mobile phone user with any wireless provider can send a text message to 4INFO's short code and in return 4INFO can respond with the content the user has requested, whether it be news, weather, sports scores, or a horoscope. When everything works correctly, 4INFO's innovative text message services can reach a vast audience and that audience can reach 4INFO.

However, the wireless providers hold considerable control over text message content providers like 4INFO and, as described above, have blocked content on several occasions. And, because aggregators are ultimately beholden to the wireless providers to which it is connected, rather than to consumers or the application providers who must rely on the aggregator to facilitate short code text message exchange, text message content providers like 4INFO are at the mercy of both wireless providers and aggregators who can block the text messages intended for 4INFO and others at any stage. Text message blocking and censorship are serious threats to the wireless market and to companies like 4INFO. Wireless providers, like Verizon, incorrectly and unlawfully assert a right to censor lawful content sought by consumers and to block SMS calls at will.²⁶ By blocking 4INFO's short code text messages and restricting the consumer's unfettered access to the content of its choosing, a wireless provider could conceivably block access to a competitor's free product in favor of their own. Indeed, the wireless providers generally have their own text message content services that compete with 4INFO's.²⁷

If a wireless provider blocks 4INFO's short code text messages, or has the aggregator block 4INFO's messages, the wireless provider has eliminated a competitor's opportunity to reach the wireless provider's subscribers, and has foreclosed consumers from accessing content of their choosing. This is especially troublesome where 4INFO may offer free content to mobile phone users that the wireless providers do not. This

²⁶ Exhibit C, Adam Liptak, *Verizon Reverses Itself on Abortion Messages*, N.Y. Times, Sept. 28, 2007, at A20, 2007 WLNR 18998680, available at <http://www.nytimes.com/2007/09/28/business/28verizon.html> (last visited January 12, 2010).

²⁷ Verizon Wireless text message alert service, <https://alerts.vzw.com/guest/general/Overview.do> (last visited January 12, 2010).

kind of anticompetitive behavior removes a free option of the consumer to obtain mobile content.

4INFO's short code should be as open to any wireless subscriber as 4INFO's webpage or 4INFO's partners' webpages are to any Internet user. 4INFO should not be hampered by the wireless provider's ability to influence aggregators to block short codes based on eliminating a competitive product. Verizon could hypothetically no more block 4INFO's webpage or the webpages of 4INFO's partners like USA Today or evite.com over its FIOS Internet service, than it should be allowed to block 4INFO's short code text messages over its wireless service. Mobile phone users should not be prevented from accessing mobile content over the mobile Internet through text message blocking or any other means. Text messages are an increasingly common means to access the Internet and should be unrestricted. Consumers benefit from open markets and open networks and the Commission should work towards the goal of opening wireless networks and text messages as much as possible.

V. CONCLUSION

For all these reasons, the Commission should encourage open access to wireless networks, including the receipt of text messages.

Dated: January 14, 2010

Respectfully submitted,

By: s/ Michael B. Hazzard

Michael B. Hazzard

Jason A. Koslofsky

Arent Fox LLP

1050 Connecticut Ave, N.W.

Washington, DC 20036-5339

Tel: (202) 857-6029

Fax: (202) 857-6395

hazzard.michael@arentfox.com

koslofsky.jason@arentfox.com

Counsel to 4INFO, Inc.

CERTIFICATE OF SERVICE

I, Jason A. Koslofsky, hereby certify that on this 14th day of January 2010, the foregoing Comments of 4INFO, Inc. were served on the following persons via ECFS and electronic mail:

s/ Jason A. Koslofsky
Jason A. Koslofsky

Competition Policy Division
Wireline Competition Bureau
Federal Communications Commission
Room 5-C140
445 12th Street, S.W.
Washington, D.C. 20554
cpdcopies@fcc.gov

Best Copy and Printing, Inc. (BCPI)
Portals II, 445 12th Street, S.W.
Room CY-B402
Washington, D.C. 20554
(202) 488-5300
fcc@bcpiweb.com.

EXHIBIT A



Text and Multimedia Messaging: Emerging Issues for Congress

Patricia Moloney Figliola

Specialist in Internet and Telecommunications Policy

March 23, 2009

Congressional Research Service

7-5700

www.crs.gov

RL34632

CRS Report for Congress

Prepared for Members and Committees of Congress

Summary

The first text messages were sent during 1992 and 1993, although commercially, text messaging was not widely offered or used until 2000. Even then, messages could only be sent between users subscribed to the same wireless carrier, e.g., Sprint customers could only exchange messages with other Sprint customers. In November 2001, however, wireless service providers began to connect their networks for text messaging, allowing subscribers on different networks to exchange text messages. Since then, the number of text messages in the United States has grown to over 48 billion messages every month. Additionally, text messages are no longer only sent as “point-to-point” communications between two mobile device users. More specifically, messages are also commonly sent from Web-based applications within a Web browser (e.g., from an Internet e-mail address) and from instant messaging clients like AIM or MSN.

For Congressional policymakers, two major categories of issues have arisen: (1) “same problem, different platform” and (2) issues stemming from the difficulty in applying existing technical definitions to a new service, such as whether a text message is sent “phone-to-phone” or using the phone’s associated email address. An example of the first category would be consumer fraud and children’s accessing inappropriate content, which have existed previously in the “wired world,” but have now found their way to the “wireless world.” An example of the second category would be that spam sent between two phones or from one phone to many phones does not fall under the definition of spam in the CAN-SPAM Act of 2003 (Controlling the Assault of Non-Solicited Pornography and Marketing Act, P.L. 108-187); however, if that same message were to be sent from a phone or computer using the phone’s associated e-mail address, it would.

The increasing use of text and multimedia messaging has raised several policy issues: applicability of CAN-SPAM Act to unwanted wireless messages; refusal of some carriers to allow users to disable text messaging; carrier blocking of Common Short Code messages; deceptive and misleading Common Short Code programs; protecting children from inappropriate content on wireless devices; mobile cyberbullying; and balancing user privacy with “Sunshine,” Open Government, and Freedom of Information Laws.

Contents

| | |
|--|----|
| Introduction | 1 |
| Definitions | 2 |
| Short Message Service | 2 |
| Enhanced and Multimedia Message Service | 3 |
| E-mail-to-SMS Messaging | 3 |
| Common Short Codes (CSCs) | 3 |
| Issues for Congress | 4 |
| Applicability of CAN-SPAM Act to Unwanted Wireless Messages | 5 |
| Inability of Consumers to Disable Text Messaging | 5 |
| Carrier Blocking of Common Short Code Messages | 5 |
| Deceptive and Misleading Common Short Code Programs | 6 |
| Protecting Children from Inappropriate Content on Wireless Devices | 7 |
| Mobile Cyberbullying | 7 |
| Disclosure of Text Messages Under Freedom of Information Laws and the Stored Communications Act | 8 |
| Using SMS to Support Law Enforcement and Emergency Response | 10 |
| Congressional and Industry Response to SMS-Related Issues | 11 |

Figures

| | |
|--|---|
| Figure 1. Path of Inter-carrier SMS Messages | 2 |
| Figure 2. Path of Common Short Code Messages | 4 |

Tables

| | |
|---|---|
| Table 1. Text Messaging Sent per Month in the United States | 1 |
| Table 2. Actual and Projected Total U.S. Text Messaging Users | 1 |

Appendixes

| | |
|--|----|
| Appendix. Text Blocking with Selected Major Carriers—Information for Consumers | 13 |
|--|----|

Contacts

| | |
|----------------------------------|----|
| Author Contact Information | 14 |
|----------------------------------|----|

Introduction

The first text messages were sent during 1992 and 1993, although commercially, text messaging was not widely offered or used until 2000. Even then, messages could only be sent between users subscribed to the same wireless carrier, e.g., Sprint customers could only exchange messages with other Sprint customers. In November 2001, however, wireless service providers began to connect their networks for text messaging, allowing subscribers on different networks to exchange text messages. Since then, the number of text messages in the United States has grown to over 48 billion messages every month. Additionally, text messages are no longer only sent as “point-to-point” communications between two mobile device users. More specifically, messages are also commonly sent from Web-based applications within a Web browser and from instant messaging clients like AIM or MSN. **Table 1** tracks the historic growth of monthly text messaging between 2001 and 2007 from about 33 million to over 48 billion messages; **Table 2** tracks the historic and projected growth in the number of mobile customers using text messaging between 2003 and 2010 from about 32 million users to 100 million.

Table 1. Text Messaging Sent per Month in the United States

| | Number of Text Messages |
|---------------|-------------------------|
| December 2007 | 48,100,000,000 |
| June 2007 | 28,800,000,000 |
| December 2006 | 18,660,000,000 |
| June 2006 | 12,040,000,000 |
| June 2005 | 7,250,000,000 |
| June 2004 | 2,860,000,000 |
| June 2003 | 1,220,000,000 |
| June 2002 | 930,000,000 |
| June 2001 | 33,500,000 |

Source: Adapted from CellSigns “Mobile Statistics,” available online at <http://www.cellsigns.com/industry.shtml> and CTIA “Wireless Quick Facts,” available online at http://www.ctia.org/media/industry_info/index.cfm/AID/10323.

Table 2. Actual and Projected Total U.S. Text Messaging Users

| | Number of Text Messaging Users |
|------|--------------------------------|
| 2010 | 100,000,000 |
| 2009 | 96,200,000 |
| 2008 | 92,000,000 |
| 2007 | 85,300,000 |
| 2006 | 75,300,000 |
| 2005 | 62,900,000 |
| 2004 | 49,700,000 |
| 2003 | 32,000,000 |

Source: Adapted from CellSigns “Mobile Statistics,” available online at <http://www.cellsigns.com/industry.shtml>.

Definitions

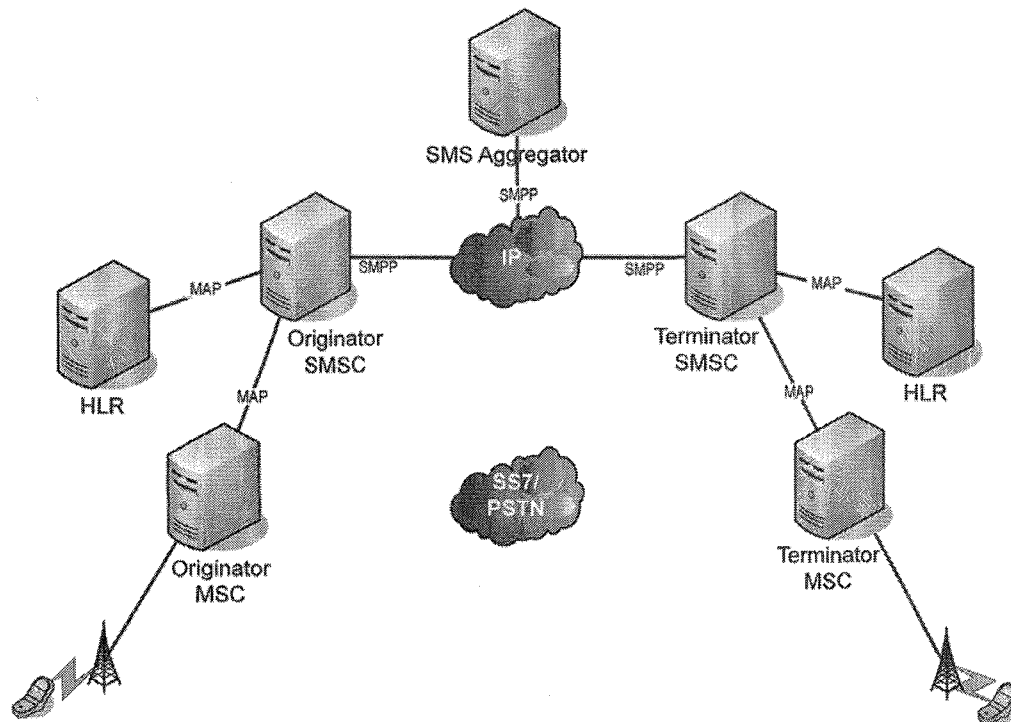
Short Message Service

Short Message Service (SMS) is a method of communication that sends text between cell phones, or from a computer or handheld device to a cell phone. The “short” part refers to the maximum size of the text messages: 160 characters.¹ The term “SMS” is generally used interchangeably with the term “text message.”

Even when not being used for a voice call, a mobile phone is constantly sending and receiving information. It is communicating to its cell phone tower over a control channel. The reason for this communication is so that the cell phone system knows which cell a phone is in, and so that the phone can change cells as the user moves around. Every so often, a phone and a tower will exchange a packet of data that lets both “know” that everything is working properly.

The control channel also provides the pathway for SMS messages. When someone sends an SMS message, the message flows through the SMS Center (SMSC), then to the cell tower, and the tower then sends the message to the recipient’s phone as a packet of data on the control channel. **Figure 1** illustrates how a SMS message is processed.

Figure 1. Path of Inter-carrier SMS Messages



Source: Used with permission from Motorola. Definitions: The “Internet Protocol (IP) cloud” represents an Internet Protocol network used to carry data traffic; HLR = Home Location Register (the central database that

¹ For some alphabets, such as Chinese, the maximum SMS size is 70 characters.

contains details of each mobile phone subscriber); MAP = Mobile Application Part signaling protocol; MSC = Mobile Switching Center; the "Public Switched Telephone Network (PSTN) cloud" is included to demonstrate that SMS messages are not carried over it; SMS Aggregator = an intermediary between mobile service providers providing SMS service; SMSC = SMS Center; SMPP = Short Message Peer-to-Peer Protocol.

Enhanced and Multimedia Message Service

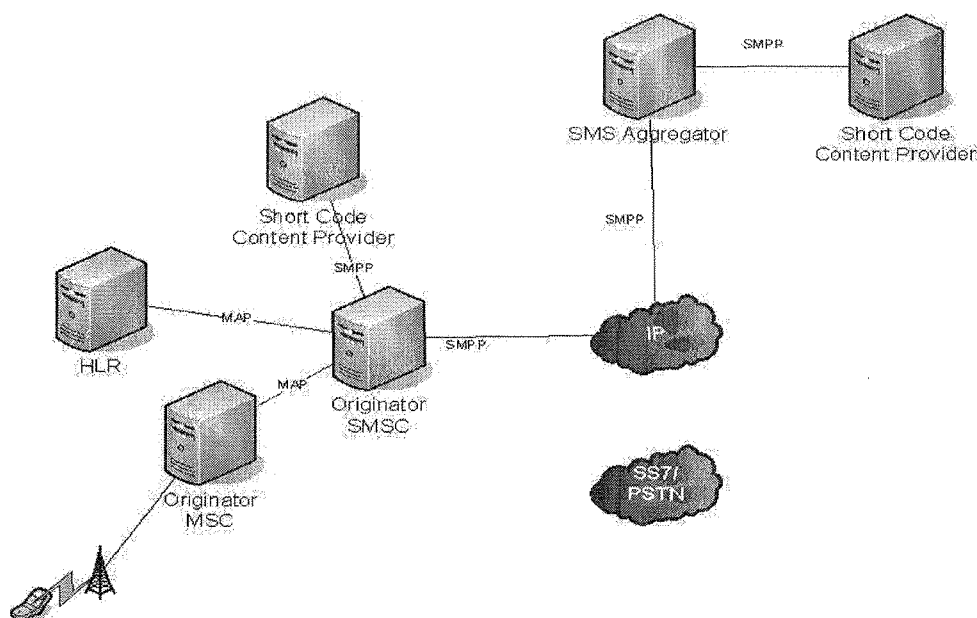
While SMS only allows plain text to be sent, two alternative messaging services allow for more elaborate types of messages. With Enhanced Messaging Service (EMS), formatted text, sound effects, small pictures, and icons can be sent. MMS (Multimedia Messaging Service) allows animations, audio, and video files in addition to text to be sent

E-mail-to-SMS Messaging

As noted above, SMS messages may be sent between a computer and a mobile phone. However, these messages are sent using the e-mail address associated with the mobile device, such as 2025551212@carrier.com. For that reason, these messages are classified as e-mail and therefore are subject to different and more stringent regulation under the CAN-SPAM Act.

Common Short Codes (CSCs)

Introduced in the U.S. market in October 2003, Common Short Codes (CSCs) are short numeric codes of five or six digits, compatible across carriers, to which text messages can be sent from a mobile phone. Wireless subscribers send text messages to short codes to access a wide variety of mobile content, for example, to vote for contestants on American Idol. Many entities use CSCs to communicate with interested parties: television stations; individual television shows; radio stations; instant messaging services; political, advocacy, and other organizations; magazines, and sports teams—among others. Users send a message to the CSC to subscribe to alerts or other messages. Sometimes these messages are delivered for free by the originator, sometimes there is a fee. **Figure 2** illustrates how a CSC message is processed.

Figure 2. Path of Common Short Code Messages

Source: Used with permission from Motorola. See **Figure 1** for acronym definitions.

“Vanity” CSCs are also available (for a higher price)—these CSCs use letters on a mobile device keypad to spell out words that are easy to remember and are chosen to reflect the service the short code is being used to access.² Furthermore, although CSCs can be “compatible” across all carriers, some CSCs are established as business partnerships between a specific carrier and another entity. For example, American Idol has an exclusive partnership with AT&T Wireless.³

Issues for Congress

For Congressional policymakers, the major issues that have arisen stem from what could be called “same problem, different platform.” For example, issues such as consumer fraud and children’s accessing inappropriate content, which have existed previously in the “wired world,” have now found their way to the “wireless world.”

Other issues stem from the difficulty in applying technical definitions to a given service, such as whether a text message is sent “phone-to-phone” or using the phone’s associated e-mail address. For example, spam sent between two phones or from one phone to many phones does not fall under the definition of spam in the CAN-SPAM Act of 2003 (Controlling the Assault of Non-

² See <https://www.usshortcodes.com/csc/search/publicsearchCSC.do?method=showVanity & group=all> for examples of such codes.

³ See <http://www.americanidol.com/mobile/> for specific instructions.

Solicited Pornography and Marketing Act, P.L. 108-187); but if that same message is sent from a phone or computer using the phone's associated e-mail address, it does.

Applicability of CAN-SPAM Act to Unwanted Wireless Messages

The CAN-SPAM Act was and is intended to curb the amount of spam that consumers receive in their e-mail accounts. At the time the act was being considered in 2003, text messaging was in its infancy as a service. As discussed above, SMS messaging is not the same as messaging that uses a mobile phone's associated e-mail address (i.e., 2025551212@carrier.com). At this time, only the latter type of message is covered by CAN-SPAM; messages that are sent "phone-to-phone" through the SMSC are not.

There is no evident reason for messages that appear the same to a user and have the same effect on a user (generally, annoyance) to be treated differently under CAN-SPAM. Resolving this discrepancy in the treatment of these two types of messages would require a change to the statute.

Inability of Consumers to Disable Text Messaging

Some mobile service customers have expressed frustration to their Congressional representatives about unwanted text messages and the inability to selectively block or completely disable text messaging on their phones. While carriers generally offer a range of text messaging packages, for example, 500 messages for \$10, some customers do not use text messaging and, therefore, pay a small fee every time they receive a message. A number of user discussion sites contain posts from users who are frustrated with the extra charges they incur from unwanted messages.⁴ In December 2007, a class-action lawsuit was filed against T-Mobile in this matter.⁵

Most carriers offer some form of text blocking to their customers. A June 12, 2008, article by David Pogue in the New York Times⁶ outlined the various options being offered by different carriers. The **Appendix** contains information from that article that may be helpful to consumers.

Given that carriers are beginning to offer various forms of text blocking to their customers, it may be advantageous to consumers to wait to see what options the different carriers develop. In that way, competition is given a chance to succeed in this area and carriers are offered the opportunity to assess what their competitors are doing and perhaps improve their own services. Eventually, however, Congress may wish to investigate whether customers are being offered the best possible options to assure that they are not receiving unwanted text messages.

Carrier Blocking of Common Short Code Messages

In September 2007, Verizon notified NARAL Pro-Choice America that it would not participate in its CSC program. NARAL does not charge for its messages and users may opt-in or opt-out as

⁴ See, for example, Mobicell Forum at <http://forums.mobiledia.com/topic35359-0-asc-10.html>.

⁵ RCR Wireless News, "Class Action Nails T-Mobile USA Over Texting Services," January 30, 2008, available online at <http://www.rcrnews.com/apps/pbcs.dll/article?AID=/20080130/FREE/927035123/1005/rss01>.

⁶ New York Times, "How to Block Cellphone Spam," by David Pogue, June 12, 2008, available online at <http://www.nytimes.com/2008/06/12/technology/personaltech/12pogue-email.html>.

desired, but Verizon stated that it does not accept programs from any group “that seeks to promote an agenda or distribute content that, in its discretion, may be seen as controversial or unsavory to any of [its] users.”⁷

This decision was immediately criticized by free-speech advocates, although communications scholars pointed out that the company most likely, from a legal standpoint, did have the right to refuse to participate in the program.⁸ Since text messages are not carried over the traditional telephone network, such messages are not protected under common carrier regulation. The next day, Verizon changed its decision and is now participating in NARAL’s CSC program, saying in a statement that the decision had been “an incorrect interpretation of a dusty internal policy” that “was designed to ward against communications such as anonymous hate messaging and adult materials sent to children.” The policy had been developed “before text messaging protections such as spam filters adequately protected customers from unwanted messages.”⁹

This issue highlights the difficulty in applying the current regulatory structure to new services. While mobile providers appear to have the legal right to determine what information is available through their CSC programs, Congress may wish to consider whether and how political and other speech might be better protected in those programs.

Deceptive and Misleading Common Short Code Programs

Many third-party content providers use the CSC program and bill the usage through the mobile service provider. For example, content providers can allow mobile device users to download content (e.g., ringtones) or participate in SMS-based “chat.” While most of these content providers are legitimate businesses, others use deceptive tactics to gain customers and run up unexpected charges.¹⁰

For example, as reported by CBS News in February 2008, some customers have subscribed to monthly services without reading the “fine print” and find that the charge is often difficult to remove because it is an independent third party rather than the customer’s mobile service provider.¹¹

The Mobile Marketing Association has developed “Consumer Best Practices Guidelines”¹² that it expects its members to follow. This code includes limiting subscription periods to one month, after which consumers must re-subscribe, and providing alerts to customers when their chat-related charges reach \$25 increments. Although the best practices have not eliminated all misleading programs, over time the industry may bring its members into compliance. More

⁷ New York Times, “Verizon Blocks Messages of Abortion Rights Group,” by Adam Liptak, September 27, 2007, available online at <http://www.nytimes.com/2007/09/27/us/27verizon.html>.

⁸ New York Times, “Verizon Blocks Messages of Abortion Rights Group,” by Adam Liptak, September 27, 2007, available online at <http://www.nytimes.com/2007/09/27/us/27verizon.html>.

⁹ New York Times, “Verizon Reverses Itself on Abortion Messages,” by Adam Liptak, September 28, 2007, available online at <http://www.nytimes.com/2007/09/28/business/28verizon.html>.

¹⁰ See Class Action Connect online at http://www.classactionconnect.com/cell_phone_issues/category/complaints-in-the-news/ for examples of these types of complaints.

¹¹ CBS News, “Ringin’ Up Big Charges For ‘Free’ Tones,” February 22, 2008, available online at <http://www.cbsnews.com/stories/2008/02/22/eveningnews/main3867197.shtml>.

¹² This document is available online at <http://www.mmaglobal.com/bestpractices.pdf>.

clarity on industry efforts might allow policymakers an opportunity to assess the efficacy of those efforts.

Protecting Children from Inappropriate Content on Wireless Devices

As more mobile devices become equipped to access the World Wide Web and additional content services are made available via CSCs, the risk of children downloading inappropriate content will likely increase. While carriers may follow a set of voluntary guidelines¹³ to promote wireless safety for children, there is no way to guarantee that children will not be able to access inappropriate content by circumventing carrier-implemented safeguards.

The following types of material can be downloaded on many wireless devices, and may include content inappropriate for children.

- Images, such as background “wallpaper” for the phone screen.
- Games, including some games that are also available for gaming systems.
- Music and songs, including ring tones, ringback tones, and downloads of full songs.
- Video, including certain television shows, movies, and music videos, as well as video programming specially made for, and only available on, wireless devices.¹⁴

The wireless industry is working to ensure that children do not access inappropriate information over their wireless devices, but there is no definitive research on the success of these efforts. Whether current efforts to protect children from inappropriate content over wireless devices may be an issue of interest to policymakers.

Mobile Cyberbullying

“Cyberbullying,” harassing communications sent, for example, via e-mail or text messages or through social networking sites such as Facebook or MySpace, is a growing problem. The issue made national headlines in November 2007 after the suicide of Megan Meier, a 13-year-old

¹³ CTIA—The Wireless Association® has voluntary guidelines for wireless carriers to use in classifying content that they provide directly over wireless handsets. These voluntary guidelines apply only to content that you purchase from your wireless carrier, either on a one-time use or download basis, or as part of a package with a monthly fee such as ring tones, wallpaper, games, music, video clips, or TV shows. Content that is generated or owned by a wireless user, such as text messages, instant messages, e-mail (through chat rooms, message boards, etc.) and picture mail is not included in the wireless carrier’s content classification system. Also, content that is accessed by surfing the Internet on a wireless handset is not currently included in the classification system. The guidelines urge carriers to provide separate Web filtering software for Web browsing services. Wireless carriers choosing to follow these voluntary guidelines agree to use at least two content ratings: (1) Generally Accessible or available to consumers of all ages; and (2) Restricted or accessible only to those age 18 and older or to those younger than 18 years old, when specifically authorized by a parent or guardian. The Restricted ratings system generally is based on or uses criteria under existing ratings systems for movies, television, music, and games. CTIA Guidelines are available online at http://www.ctia.org/advocacy/policy_topics/topic.cfm/TID/36.

¹⁴ FCC Consumer Fact Sheet, “Protecting Children from Adult Content on Wireless Devices,” available online at <http://www.fcc.gov/cgb/consumerfacts/protectingchildren.html>.

Missouri girl. In that case, the mother of a former friend of Megan's set up a fake MySpace page, pretending to be a boy who had just moved to the area and was home-schooled. Within a few weeks of becoming "friends" with "Josh," on October 15, 2006, the tone of his messages changed drastically, with "Josh" saying he no longer wanted to be friends with Megan, because "he" had heard that she had been mean to some of her friends. On October 16, 2006, Megan hanged herself in her closet.

Although, as in the case described above, much cyberbullying takes place in the "wired" world, more recently, these sorts of messages are being sent from and to mobile devices. Since many mobile devices are capable of performing the same tasks as computers, these messages are now being sent via mobile instant messaging, the mobile websites of social networking sites, and text messaging.

The subsequent public outcry over the Megan Meier case led to four bills being introduced in the 110th Congress, three by Representative Linda Sanchez and one by Senator John Kerry; each contained language that would have included the use of wireless devices in the definition of cyberbullying.

- H.R. 3577 was introduced on September 17, 2007, and referred to the House Committee on Energy and Commerce Subcommittee on Telecommunications and the Internet; no further action was taken.
- H.R. 4134 was introduced on November 9, 2007; it was passed by the House on November 13, 2007, and referred to the Senate Committee on the Judiciary on November 14, 2007.
- H.R. 6120 was introduced on May 21, 2007, and referred to the House Committee on the Judiciary; no further action was taken.
- S. 3016 was introduced on May 14, 2007, and referred to the Senate Committee on the Judiciary; no further action was taken.

The bills were substantially similar. All would have defined cyberbullying to include "verbal, visual, or written psychological bullying or harassment by an individual or group, using an electronic device or devices including e-mail, instant messaging, text messages, blogs, telephones, pagers, and websites, to support deliberate, repeated, and hostile behavior that is intended to harm others." H.R. 3577, H.R. 4134, and S. 3016 would have authorized \$5,000,000 for educational grants to carry out Internet crime prevention education programs from 2008 through 2012; H.R. 6120 would have authorized \$10,000,000 for the time period 2009 through 2013.

Disclosure of Text Messages Under Freedom of Information Laws and the Stored Communications Act¹⁵

Text messages are routinely used to conduct government business. As a result employers, litigants, newspapers, and public interest groups are increasingly seeking access to the contents of such communications in order to shed light on the workings of government. One of the arguments against disclosure of text messages emerging from public officials is that certain delivery

¹⁵ Gina Marie Stevens, Legislative Attorney in the CRS American Law Division, contributed to this section.

platforms or technological devices should, by their very nature, be private because the official owns them, or keeps them in her pocket. Because text messaging represents a relatively new form of electronic communications, state and federal courts are considering requests for access to and disclosure of text messages pursuant to freedom of information and privacy laws.

Courts have begun exploring ways to apply open government laws to text messages. In Texas, a state judge ordered the City of Dallas to turn over e-mails and text messages sent by city officials from personal accounts and personal hand-held devices to conduct city business, and held that the e-mails and messages were subject to disclosure under the Texas Public Information Act.¹⁶ Newspapers in Detroit, Michigan, filed a Freedom of Information Act (FOIA) lawsuit against the city seeking disclosure of text messages sent by Detroit elected officials on city-issued pagers that relate to the city's \$8.4 million settlement of two whistle-blower lawsuits brought by former Detroit police officers.¹⁷ The city has argued that disclosure of the text messages would violate the federal Stored Communications Act. A public records directive issued by the city states that all electronic communications sent on city equipment "is not considered to be personal or private."¹⁸ Although the newspapers obtained the text messages through an anonymous source, they continue to press for the release of additional information under public records law.¹⁹ A court ruled part of the information the newspapers wanted was public, the Free Press published text messages related to the cover-up and the Mayor and Chief of Staff were charged with eight felonies.²⁰ The newspapers are continuing to pursue additional information using the state FOIA.

New York legislators worked to revise the state's open records law to specifically add text messages to the list of records covered.²¹ A new Freedom of Information Law became effective in New York on August 7, 2008, and includes provisions which reflect a recognition of advances in information technology, but does not include a provision on text messaging.²²

Subject to certain exceptions, the Stored Communications Act (SCA), which is part of the Electronic Communications Privacy Act, bars "a person or entity providing an electronic communications service to the public" from knowingly divulging to any person or entity the contents of a communication while in electronic storage by that service." The SCA distinguishes between two types of providers: "remote computing services" and "electronic communications services."

¹⁶ Jennifer LaFleur, *Dallas: City Must Provide Messages From Officials' Personal Accounts*, Dallas Morning News, October 30, 2007, available at http://www.dallasnews.com/sharedcontent/dws/news/localnews/stories/DN-emails_30met.ART0.State.Edition1.421bfa.html.

¹⁷ *Detroit Free Press, Inc., et al. v. City of Detroit*, No. 08-100214 CZ, Wayne County Circuit Court, MI, at <http://info.detnews.com/2008/0307motiontocompel.pdf>.

¹⁸ On June 26, 2000, Mayor Kilpatrick signed a "Directive for the Use of the City of Detroit's Electronic Communications System."

¹⁹ A "public record" under the Michigan Freedom of Information Act is a writing that is: (1) prepared; (2) owned; (3) used; (4) in the possession of, or (5) retained by a public body in the performance of an official function..... MCL 15.232(e).

²⁰ For an excellent chronology of developments, see Reporters Committee for Freedom of the Press, at <http://www.rcfp.org/newsitems/index.php?key=121&op=keyword>.

²¹ "Battle Over Public Information Expands," by Ledyard King, Federal Times, March 24, 2008, p. 14.

²² N.Y. Pub. Off. Law § 84 *et seq.* For a summary of the amendments to the Freedom of Information Law, see <http://www.dos.state.ny.us/coog/foi/news2.html>.

Courts have been examining whether the disclosure of text messages sent by employees on employer-issued pagers violates the privacy rights of employees, and whether such disclosure is barred by the Stored Communications Act.²³ The Ninth Circuit Court of Appeals recently held that the city employer violated the constitutional rights of an employee when the employer reviewed text messages sent and received by the employee on his employer-provided pager. The court of appeals also held that the text-messaging service provider violated the federal Stored Communications Act by giving the city transcripts of the text messages. In *Quon v. Arch Wireless*,²⁴ the Ninth Circuit held that a city's text message provider was an electronic communications service for purposes of the act because it enabled city employees to send and receive wire communications. In *Quon*, city employees sued their employer after they were fired for using their employer-provided mobile devices for personal communications.

Using SMS to Support Law Enforcement and Emergency Response

In April 2008, the FCC adopted rules for the Commercial Mobile Alert System (CMAS), which will deliver emergency text messages to the public during emergencies and natural disasters,²⁵ and recommended that the Federal Emergency Management Agency (FEMA) be the program's aggregator. The program was mandated by the Warning, Alert and Response Network Act that was signed into law in 2006.²⁶ Under this law, the FCC was required to develop plans for a commercial mobile-alert system through which wireless carriers would voluntarily transmit text messages sent out by the government. The FCC has divided the types of messages the government will send out to mobile-phone users into three broad categories:²⁷

- Presidential Alerts deal with national emergencies and will take precedence over any other impending alerts
- Imminent Threat Alerts deal with emergencies that may pose an imminent risk to people's lives or well-being.
- Child Abduction Emergency/AMBER alerts will be related to missing or abducted children.

In addition, the FCC says that all subscribers with roaming agreements will receive timely alerts "provided the subscriber's mobile device is configured for and technically capable of receiving alert messages from the roamed upon network."²⁸

²³ 18 U.S.C. § 2701 *et seq.*

²⁴ No. 07-55282, (9th Cir. June 18, 2008). The opinion is online at [http://www.ca9.uscourts.gov/ca9/newopinions.nsf/D2CDDDB4098D7AFB28825746C0048ED24/\\$file/0755282.pdf?openement](http://www.ca9.uscourts.gov/ca9/newopinions.nsf/D2CDDDB4098D7AFB28825746C0048ED24/$file/0755282.pdf?openement).

²⁵ Federal Communications Commission, In the Matter of the Commercial Mobile Alert System, First Report and Order, FCC 08-99, PS Docket No. 07-287, April 9, 2008, available online at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-08-99A1.pdf ("Commercial Mobile Alert System, First Report and Order"). See also, FCC Adopts Rules for Delivery of Commercial Mobile Alerts to the Public During Emergencies (FCC 08-99), April 9, 2008, available online at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-08-99A1.pdf. See also the FCC's Consumer Fact Sheet on CMAS at <http://www.fcc.gov/cgb/consumerfacts/cmas.html>.

²⁶ Warning, Alert, and Response Network Act, Title VI of the Security and Accountability for Every Port Act of 2006, P.L. 109-347, 120 Stat. 1884 (2006).

²⁷ Commercial Mobile Alert System, First Report and Order, paras. 26-32.

²⁸ Commercial Mobile Alert System, First Report and Order, para. 79.

The architecture adopted by the FCC calls for a centralized alert-aggregator where federal and state emergency-response agencies would send their warning messages to be authenticated and dispersed to the appropriate participating commercial mobile services. Noting FEMA's role in developing the proposal for the adopted architecture, the FCC recommended the agency as its first choice to serve as the alert aggregator and FEMA has accepted that role

The FCC has issued a Second Report and Further Notice of Proposed Rulemaking;²⁹ an Order on Reconsideration and Erratum;³⁰ and a Third Report and Order.³¹ Of particular note, in the Third Report and Order, the FCC—

- adopted notification requirements for wireless providers that elect not to participate, or to participate only in part, with respect to new and existing subscribers;
- adopted procedures by which wireless providers may elect to transmit emergency alerts and to withdraw such elections;
- adopted a rule governing the provision of alert opt-out capabilities for subscribers;
- allowed participating wireless providers to recover costs associated with the development and maintenance of equipment supporting the transmission of emergency alerts; and
- adopted a compliance timeline under which participating wireless providers must begin CMAS deployment.

At this time, the technical standardization process at FEMA is not yet complete and CMAS is, therefore, not operational.

Congressional and Industry Response to SMS-Related Issues

The issues discussed in this report have prompted different levels of response from Congress and the wireless industry:

- Issues that are being addressed by industry, so policymakers may wish to wait and see how those efforts play out;
- Issues that have not risen to a level of priority in Congress, but would require statutory action to effect change; and

²⁹ Federal Communications Commission, In the Matter of the Commercial Mobile Alert System, Second Report and Further Notice of Proposed Rulemaking, FCC 08-164, PS Docket No. 07-287, July 8, 2008, available online at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-08-164A1.pdf.

³⁰ Federal Communications Commission, In the Matter of the Commercial Mobile Alert System, Order on Reconsideration and Erratum, FCC 08-166, PS Docket No. 07-287, July 15, 2008, available online at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-08-166A1.pdf.

³¹ Federal Communications Commission, In the Matter of the Commercial Mobile Alert System, Third Report and Order, FCC 08-184, PS Docket No. 07-287, July 15, 2008, available online at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-08-184A1.pdf.

- Issues that have triggered a legislative response.

As wireless communications technologies, and the issues that accompany them, evolve over time, so likely will the approaches that industry and Congress will take to ensure consumer safety and satisfaction.

Appendix. Text Blocking with Selected Major Carriers—Information for Consumers

AT&T

Customers must log in at mymessages.wireless.att.com. Text-blocking and alias options are available under “Preferences.” Messages from specific e-mail addresses or websites can also be blocked from this page.

Verizon Wireless

Customers must log in at vtext.com. Text blocking options are available under “Text Messaging”/“Preferences.” Select “Text Blocking.” Consumers may block text messages from e-mail or from the Web, including blocking specific addresses or websites.

Sprint

Customers must log in at <http://www.sprint.com>. Sprint does not offer auto-blocking, but consumers can block specific phone numbers and addresses. On the top navigation bar, select, “My Online Tools”/“Communication Tools”/“Text Messaging.” On the Compose a Text Message page, under Text Messaging Options, select “Settings & Preferences.” In the text box, customers can enter a phone number, e-mail address, or domain name to block.

T-Mobile

Customers must log in at <http://www.t-mobile.com> and select “Communication Tools.” T-Mobile doesn’t yet offer a “block text messages from the Internet” option. Customers can block all messages sent by e-mail, though, or permit only messages sent to the phone’s e-mail address or alias, or create filters that block text messages containing certain phrases.³²

³² “How to Block Cellphone Spam,” NYTimes.com, Pogue’s Posts, June 12, 2008, available online at <http://pogue.blogs.nytimes.com/2008/06/12/how-to-block-cellphone-spam/?scp=1&sq=Text%20Blocking&st=cse>.

Author Contact Information

Patricia Moloney Figliola
Specialist in Internet and Telecommunications
Policy
pfigliola@crs.loc.gov, 7-2508

EXHIBIT B

9/27/07 N.Y. Times A1
2007 WLNR 18960271

New York Times (NY)
Copyright 2007 The New York Times Company

September 27, 2007

Section: A

Verizon Rejects Text Messages From an Abortion Rights Group

ADAM LIPTAK

Verizon Wireless rejects request from Naral Pro-Choice America, abortion rights group, to make Verizon's mobile network available for text-message program; other wireless carriers have accepted program, which allows people to sign up for text messages from Naral; text messaging is growing political tool used by many candidates and advocacy groups to reach supporters; legal experts say private companies probably have legal right to decide which messages to carry; dispute is part of larger battle over 'net neutrality'--whether carriers or Internet service providers should have choice in content they provide to customers; Naral says companies should not be allowed to censor

Saying it had the right to block "controversial or unsavory" text messages, Verizon Wireless has rejected a request from Naral Pro-Choice America, the abortion rights group, to make Verizon's mobile network available for a text-message program.

The other leading wireless carriers have accepted the program, which allows people to sign up for text messages from Naral by sending a message to a five-digit number known as a short code.

Text messaging is a growing political tool in the United States and a dominant one abroad, and such sign-up programs are used by many political candidates and advocacy groups to send updates to supporters.

But legal experts said private companies like Verizon probably have the legal right to decide which messages to carry. The laws that forbid common carriers from interfering with voice transmissions on ordinary phone lines do not apply to text messages.

The dispute over the Naral messages is a skirmish in the larger battle over the question of "net neutrality" -- whether carriers or Internet service providers should have a voice in the content they provide to customers.

"This is right at the heart of the problem," said Susan Crawford, a visiting professor at the University of

Michigan law school, referring to the treatment of text messages. "The fact that wireless companies can choose to discriminate is very troubling."

In turning down the program, Verizon, one of the nation's two largest wireless carriers, told Naral that it does not accept programs from any group "that seeks to promote an agenda or distribute content that, in its discretion, may be seen as controversial or unsavory to any of our users." Naral provided copies of its communications with Verizon to The New York Times.

Nancy Keenan, Naral's president, said Verizon's decision interfered with political speech and activism.

"No company should be allowed to censor the message we want to send to people who have asked us to send it to them," Ms. Keenan said. "Regardless of people's political views, Verizon customers should decide what action to take on their phones. Why does Verizon get to make that choice for them?"

A spokesman for Verizon said the decision turned on the subject matter of the messages and not on Naral's position on abortion. "Our internal policy is in fact neutral on the position," said the spokesman, Jeffrey Nelson. "It is the topic itself" -- abortion -- "that has been on our list."

Mr. Nelson suggested that Verizon may be rethinking its position. "As text messaging and multimedia services become more and more mainstream," he said, "we are continuing to review our content standards." The review will be made, he said, "with an eye toward making more information available across ideological and political views."

Naral provided an example of a recent text message that it has sent to supporters: "End Bush's global gag rule against birth control for world's poorest women! Call Congress. (202) 224-3121. Thnx! Naral Text4Choice."

Messages urging political action are generally thought to be at the heart of what the First Amendment protects. But the First Amendment limits government power, not that of private companies like Verizon.

In rejecting the Naral program, Verizon appeared to be acting against its economic interests. It would have received a small fee to set up the program and additional fees for messages sent and received.

Text messaging programs based on five- and six-digit short codes are a popular way to receive updates on news, sports, weather and entertainment. Several of the leading Democratic presidential candidates have used them, as have the Republican National Committee, Save Darfur and Amnesty International.

Most of the candidates and advocacy groups that use text message programs are liberal, which may reflect the demographics of the technology's users and developers. A spokeswoman for the National Right to Life Committee, which is in some ways Naral's anti-abortion counterpart, said, for instance, that it has not dabbled in text messaging.

Texting has proved to be an extraordinarily effective political tool. According to a study released this month by researchers at Princeton and the University of Michigan, young people who received text messages reminding them to vote in November 2006 were more likely to go to the polls. The cost per vote generated, the study said, was much smaller than other sorts of get-out-the-vote efforts.

Around the world, the phenomenon is even bigger.

"Even as dramatic as the adoption of text messaging for political communication has been in the United States, we've been quite slow compared to the rest of the world," said James E. Katz, the director of the Center for Mobile Communication Studies at Rutgers University. "It's important in political campaigns and political protests, and it has affected the outcomes of elections."

Timothy Wu, a law professor at Columbia, said it was possible to find analogies to Verizon's decision abroad. "Another entity that controls mass text messages is the Chinese government," Professor Wu said.

Jed Alpert, the chief executive officer of Mobile Commons, which says it is the largest provider of mobile services to political and advocacy groups, including Naral, said he had never seen a decision like Verizon's.

"This is something we haven't encountered before, that is very surprising and that we're concerned about," Mr. Alpert said.

Professor Wu pointed to a historical analogy. In the 19th century, he said, Western Union, the telegraph company, engaged in discrimination, based on the political views of people who sought to send telegrams. "One of the eventual reactions was the common carrier rule," Professor Wu said, which required telegraph and then phone companies to accept communications from all speakers on all topics.

Some scholars said such a rule was not needed for text messages because market competition was sufficient to ensure robust political debate.

"Instead of having the government get in the game of regulating who can carry what, I would get in the game of promoting as many options as possible," said Christopher S. Yoo, a law professor at the University of Pennsylvania. "You might find text-messaging companies competing on their openness policies."

PHOTO: An example of a Naral Pro-Choice America text message. (pg. A1)

CHART: SENDING A MESSAGE: Sample communications from some of the organizations that use text messaging for political advocacy. (ILLUSTRATION BY THE NEW YORK TIMES) Chart showing text messages used for political advocacy. (pg. A30)

--- INDEX REFERENCES ---

COMPANY: NARAL PRO CHOICE AMERICA; TEXT CO LTD; VERIZON LABORATORIES; REPUBLICAN NATIONAL COMMITTEE; CELLCO PARTNERSHIP; RUTGERS UNIVERSITY; VERIZON WIRELESS INC; VERIZON WIRELESS

NEWS SUBJECT: (Legal (1LE33); Major Corporations (1MA93); Online Legal Issues (1ON39))

INDUSTRY: (Internet Regulatory (1IN49); I.T. (1IT96); Internet Services (1IN96); Telecom Carriers & Operators (1TE56); Internet Service Providers Equipment (1IN52); Internet Service Providers (1IN56); Internet (1IN27); Healthcare (1HE06); Women's Health (1WO30); Networking (1NE45); Telecom (1TE27); Contraception (1CO66); Healthcare Practice Specialties (1HE49); Wireless Internet & Messaging (1WI49); Wireless Networking (1WI62))

REGION: (Americas (1AM92); North America (1NO39); USA (1US73); Michigan (1MI45))

Language: EN

OTHER INDEXING: (AMNESTY INTL; CHOICE AMERICA; LIFE COMMITTEE; NARAL; NARAL PRO; NARAL PRO CHOICE AMERICA; NEW YORK TIMES; REPUBLICAN NATIONAL COMMITTEE; RUTGERS UNIVERSITY; TEXT; UNIVERSITY OF MICHIGAN; UNIVERSITY OF PENNSYLVANIA; VERIZON; VERIZON REJECTS TEXT; VERIZON WIRELESS) (Alpert; Call Congress; Christopher S. Yoo; James E. Katz; Jed Alpert; Jeffrey Nelson; Keenan; Nelson; Save Darfur; Susan Crawford; Timothy Wu; Wu)

EDITION: Late Edition - Final

Word Count: 1461

9/27/07 NYT A1

END OF DOCUMENT

EXHIBIT C

9/28/07 N.Y. Times A20
2007 WLNR 18998680

New York Times (NY)
Copyright 2007 The New York Times Company

September 28, 2007

Section: A

In Reversal, Verizon Says It Will Allow Group's Texts

ADAM LIPTAK

Reversing course, Verizon Wireless announced yesterday that it would allow an abortion rights group to send text messages to its supporters on Verizon's mobile network.

"The decision to not allow text messaging on an important, though sensitive, public policy issue was incorrect," said Jeffrey Nelson, a spokesman for Verizon, in a statement issued yesterday morning, adding that the earlier decision was an "isolated incident."

Last week, Verizon rejected a request from the abortion rights group, Naral Pro-Choice America, for a five-digit "short code." Such codes allow people interested in hearing from businesses, politicians and advocacy groups to sign up to receive text messages.

Verizon is one of the two largest mobile carriers. The other leading carriers had accepted Naral's request for the code.

In turning down the request last week, Verizon told Naral that it "does not accept issue-oriented (abortion, war, etc.) programs -- only basic, general politician-related programs (Mitt Romney, Hillary Clinton, etc.)."

In yesterday's statement, Mr. Nelson called that "an incorrect interpretation of a dusty internal policy" that "was designed to ward against communications such as anonymous hate messaging and adult materials sent to children." The policy, Mr. Nelson said, had been developed "before text messaging protections such as spam filters adequately protected customers from unwanted messages."

But the program requested by Naral would have sent messages only to people who had asked to receive them.

Nancy Keenan, Naral's president, expressed satisfaction yesterday. "The fight to defeat corporate censorship

was won," she said. But Ms. Keenan added that her group "would like to see Verizon make its new policy public."

Verizon did not respond to repeated requests for copies of the policy or an explanation for why it is withholding it.

Text messaging is an increasingly popular tool in American politics and an established one abroad. In his statement, Mr. Nelson acknowledged that the technology is "being harnessed by organizations and individuals communicating their diverse opinions about issues and topics." He said Verizon has "great respect for this free flow of ideas."

But the company did not retreat from its position that it is entitled to decide what messages to transmit.

Legal experts said Verizon's position is probably correct under current law, though some called for regulations that would require wireless carriers of text messages to act like common carriers, making their services available to all speakers on all topics.

"This incident, more than ever, shows the need for an open, nondiscriminatory, neutral Internet and telecommunications system that Americans once enjoyed and took for granted," said Gigi B. Sohn, the president of Public Knowledge, a consumer advocacy group.

Some of Verizon's customers said they were outraged by the company's initial stance.

Gary Mitchell, a lawyer in New Jersey, said he called a Verizon customer sales representative yesterday morning to cancel his wireless service in protest. After spending a few minutes on hold, he said, the representative read him an e-mail message that she said all the customer service representatives had just received. The message instructed representatives to tell callers that the policy had been reversed.

Verizon kept Mr. Mitchell's business but lost some of his respect. "It was an incredibly foolish corporate decision," he said.

Wyn Hoag, a photographer in California, said he was still mulling whether to cancel his Verizon service.

"I'm a supporter of abortion rights, but I could be a Christian-right person and still be in favor of free speech," Mr. Hoag said. "If they think they can censor what's on my phone, they've got another thing coming."

---- INDEX REFERENCES ----

COMPANY: VERIZON LABORATORIES; CELLCO PARTNERSHIP

NEWS SUBJECT: (Major Corporations (1MA93))

INDUSTRY: (Telecom Carriers & Operators (1TE56); Telecom (1TE27))

Language: EN

OTHER INDEXING: (PUBLIC KNOWLEDGE; REVERSAL; VERIZON) (Gary Mitchell; Gigi B. Sohn; Hillary Clinton; Hoag; Jeffrey Nelson; Keenan; Mitchell; Mitt Romney; Nancy Keenan; Naral; Naral Pro-Choice America; Nelson; Wyn Hoag)

EDITION: Late Edition - Final

Word Count: 765

9/28/07 NYT A20

END OF DOCUMENT

EXHIBIT D

BusinessWeek

NEWS December 13, 2007, 5:00PM EST

Not on Our Network, You Don't

The big wireless guys talk about opening up—while rejecting some competing mobile text services

by Bruce Meyerson

Even as the wireless industry spreads a new gospel about opening mobile-phone networks to outside devices and applications, some of the biggest U.S. carriers are blocking new services that would compete with their own.

At issue is a type of mobile text message known as a short code, a shortcut that lets cell-phone users access an array of services—say, getting sports scores or voting for a contestant on *American Idol*—by punching in five or six digits instead of the usual seven plus area code. While it's illegal for phone companies to dictate which numbers customers can or can't dial, carriers don't appear to be breaking regulations by blocking short codes.

The Federal Communications Commission, which declined to comment, has never regulated the codes. However, on Dec. 11, Public Knowledge and other consumer groups complained that interference in text messaging is a threat to free speech. They asked the FCC to ban the practice, citing Verizon Wireless' refusal in September to allow a short code for NARAL Pro-Choice America. Verizon quickly reversed that decision and apologized.

LUCRATIVE LITTLE MESSAGES

Verizon and other carriers say short-code applicants can still use regular text messaging to offer their services. Therefore, some experts say, carriers may be acting within their rights. But consumers are coming to expect short codes much as they expect companies to have toll-free numbers. And the messages can be lucrative. In the popular TV show *Deal or No Deal*, for instance, viewers pay \$1 a pop for a chance to win \$10,000. Further, the restrictions seem to fly in the face of proclamations by Verizon and AT&T (T) about allowing competing devices and services on their tightly controlled networks.

One company rebuffed by some carriers is Rebtel Networks, a Swedish provider of cheap international calls over the Web. Rebtel wants to use short codes to bring its service to mobile phones. Users would send a text message containing the desired overseas phone number to Rebtel's short code. They would receive a text message with a local phone number to dial, and pay pennies per minute rather than the quarters and dollars cellular carriers charge for overseas connections. In May, Rebtel applied for a short code with five big U.S. wireless providers. Sprint Nextel (S) and AT&T approved the request. But Verizon, T-Mobile USA, and Alltel (at) denied it. Co-founder Greg Spector says the company handling its application was told by Alltel that Rebtel's service "cannibalizes their international rates."

T-Mobile and Alltel declined to comment. Verizon says it did nothing wrong. "They can still text-message our customers," says spokesman Jeffrey Nelson. Just as a newspaper can reject ads from a rival, he says, "we don't need to provide special access to our customers and network to a company that's in direct competition with us."

It's not just small fry that are having trouble. AT&T recently refused to approve short-code applications by four banks wanting to offer customers a mobile application to check account balances, transfer funds, and perform

other transactions, say people familiar with the matter. One of the institutions was Bank of Stockton, a 140-year-old California bank, while two others were among the 20 largest U.S. banks.

The applications, submitted in the third quarter, were initially rejected in October, the sources say. Under pressure from the banks and financial industry groups, AT&T relented in mid-November. But around the same time, the phone giant launched its own mobile-banking service in partnership with Wachovia (WB) and SunTrust Banks (STI). AT&T declined to discuss specific applications, but stressed that it had approved other banking short codes in the past.

Meyerson is Deputy Technology Editor for BusinessWeek.com.